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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,453	02/26/2002	William T. Dalebout	13914.380.1.1.I	8307
7590	10/01/2004		EXAMINER	
WORKMAN, NYDEGGER & SEELEY			RICHMAN, GLENN E	
1000 Eagle Gate Tower			ART UNIT	PAPER NUMBER
60 E. South Temple				
Salt Lake City, UT 84111			3764	

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/083,453	DALEABOUT ET AL.
	Examiner	Art Unit
	Glenn Richman	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 June 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/23/03</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-4, 8-11, 17, 18, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Hung. 6059695

Hung discloses (a) a base; (b) a deck having a rear portion, an opposing front portion, and an endless belt rotatably mounted thereon, said rear portion of said deck being movably mounted on said base, a handrail movably attached to said deck (2), said deck configured to be selectively rotated between an operational position in which said deck is positioned for use by a user position thereon , and a storage position in which said deck is positioned proximate to said handrail (fig. 3 and 4), said handrail further being configured to rotate into a storage configuration when said deck is moved

from said operational position to said storage position and to unfold when said deck is moved from said storage position to said operational position such that said handrail extends above said front portion of said deck when said deck is in said operational position (figures 3 and 4).

As for claims 2-4, Hung further discloses incline means for varying the inclination of said deck relative to a support surface while said deck is in said operational position (5), fold-out mechanism configured to vary the inclination of said deck relative to a support surface while said deck is in said operational position, said mechanism being moveably attached to said deck (fig. 4), a motor movably attached to said base and a foot operably connected to said motor (4).

As for claims 8-11, Hung discloses base defines a footprint on a support surface when said deck is in said operational position and wherein said handrail and said deck remain entirely within said footprint as said deck is moved between said operational position and said storage position (fig. 3 and 4), means for attaching said handrail to said deck so as to enable said handrail to project above said deck when said deck is in said operational position and to rotate into said storage position (fig. 3 and 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 5-7, 12-16, 19, 21-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hung in view of Coody et al.

Hung does not disclose a lift means for automatically moving deck between the operational position and the storage position.

Coody et al disclose a lift means for automatically moving deck between the operational position and the storage position (abstract).

It would have been obvious to use Coody et al's motor, with Hung's treadmill, as it is well known to use a motor to assist in the lifting of a treadmill bed, as taught by Coody et al.

Coody et al further disclose a motor movably attached to said base and an elongated member movably (col. 3, lines 1-5) and an incline mechanism (abstract).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is 703 308-3170. The examiner can normally be reached on Mon-Thurs.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Glenn Richman
Primary Examiner
Art Unit 3764